

## **2022 Guidelines for the Application of the Retail Sales and Use Tax to Sales of Accommodations Facilitated by Accommodations Intermediaries**

Effective October 1, 2022, [House Bill 518](#) and [Senate Bill 651](#) (2022 *Acts of Assembly*, Chapters 7 and 640) change the application of the Retail Sales and Use Tax (“RSUT”) and transient occupancy taxes to sales of accommodations involving accommodations intermediaries. These guidelines provide processes and procedures for implementing the provisions of *Va. Code* §§ 58.1-602 and 58.1-612.2 relating to the application of the RSUT and the provisions of *Va. Code* § 58.1-3826 relating to the application of transient occupancy taxes to sales of accommodations, as required by House Bill 518 and Senate Bill 651. These changes also apply to the state imposed transient occupancy taxes that fund transportation purposes in certain localities under *Va. Code* §§ 58.1-1743 and 58.1-1744 because these taxes are administered by local governments in the same manner as their local transient occupancy taxes.

These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 *et seq.*) and are being published in accordance with the requirement that the Tax Commissioner publish these guidelines pursuant to the third enactment clauses of House Bill 518 and Senate Bill 651, as well as the Tax Commissioner’s general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202. As necessary, additional information will be published and posted on the Department of Taxation’s website, [www.tax.virginia.gov](http://www.tax.virginia.gov).

These guidelines represent the Department’s interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

### **Background on the Taxation of Sales of Accommodations Facilitated by Accommodations Intermediaries**

In [Public Document 06-139](#) (October 24, 2006), the Department determined that the RSUT levied on transient accommodations is to be computed only upon the amount paid to the provider of the accommodations without regard to any service fee paid to a third-party facilitator of the rental transaction.

2021 [Senate Bill 1398](#) (2021 *Acts of Assembly*, Chapter 383) changed this treatment by providing that, effective September 1, 2021, the RSUT shall be calculated based on the total charges or the total price paid for the use or possession of transient lodgings, including any fees charged by accommodations intermediaries for the facilitation of transactions for the provision of transient accommodations. Senate Bill 1398 also

provided several new definitions for purposes of the RSUT. Senate Bill 1398 made similar changes to the transient occupancy taxes. For additional information about Senate Bill 1398, please refer to the [Guidelines for the Application of the Retail Sales and Use Tax to Sales of Accommodations Facilitated by Accommodations Intermediaries](#) (“2021 Guidelines”). The provisions of the 2021 Guidelines remain in effect for the period beginning September 1, 2021 through September 30, 2022.

## **Overview of 2022 House Bill 518 and Senate Bill 651**

2022 House Bill 518 and Senate Bill 651 broaden the definition of “accommodations intermediary” and “room charge” for purposes of the RSUT, effective October 1, 2022. The bills also require accommodations intermediaries to collect the tax and remit it to the Department, and eliminate the requirement that, where the accommodations are provided at a hotel, accommodations intermediaries remit the portion of the tax not attributable to the accommodations fee to the hotel for the hotel to remit to the Department. The bills also provide that in a transaction involving multiple parties that may be considered accommodations intermediaries, such parties may agree that one party shall be responsible for collecting and remitting the tax. In such event, the party agreeing to collect and remit the tax shall be the sole party liable for the tax.

The bills make similar changes to transient occupancy taxes administered by localities. The bills also require intermediaries to submit to the locality each month the property addresses and gross receipts for all accommodations facilitated by the intermediary in the locality.

## **Definitions**

Effective October 1, 2022, the following definitions apply for purposes of the RSUT and transient occupancy taxes. (See *Va. Code* § 58.1-602) For definitions of these terms applicable prior to October 1, 2022, refer to 2021 Guidelines.

“Accommodations” means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, short-term rental, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration.

“Accommodations fee” means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than \$0.

“Accommodations intermediary” means any person other than an accommodations provider that (i) facilitates the sale of an accommodation, and (ii) either (a) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, “facilitates the sale” includes brokering, coordinating, or in any other way

arranging for the purchase of the right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider. An “accommodations intermediary” does not include a person:

1. If the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person;
2. Who facilitates the sale of an accommodation if (i) the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodations provider to such person; or
3. Who is licensed as a real estate licensee pursuant to *Va. Code* § 54.1-2100 *et seq*, when acting within the scope of such license.

“Accommodations provider” means any person that furnishes accommodations to the general public for compensation. The term “furnishes” includes the sale of use or possession or the sale of the right to use or possess.

“Affiliate” means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, ‘control’ (including control by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

“Discount room charge” means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

“Room charge” means the full retail price charged to the customer for the use of the accommodations, as well as any charges made in connection with the rental of the accommodations, before taxes. This includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, or any other name. The room charge shall be determined in accordance with [23 Virginia Administrative Code \(“VAC”\) 10-210-730](#) and the related rulings of the Department on the same.

“Short-term rental” means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

## **Collection of Tax Beginning October 1, 2022**

For any retail sale of accommodations facilitated by an accommodations intermediary, regardless of whether the accommodations are at a hotel, short-term rental, or other type of lodging, the accommodations intermediary shall be deemed a dealer making a retail sale of accommodations and must collect the tax computed on the room charge and remit the same to the Department. (See *Va. Code* § 58.1-612.2 B)

For any transaction involving two or more parties that meet the definition of “accommodations intermediary,” the parties may make an agreement regarding which party shall be responsible for collecting and remitting the tax, so long as the responsible party is a dealer registered with the Department. (See *Va. Code* § 58.1-612.2 C)

Additional charges levied in connection with the rental of accommodations that are not part of the “room charge” and the tax collectible on such charges are collectible from the customer by the accommodations provider. In such instances, the accommodations provider shall remit the tax collected on the additional charges to the Department. (See [23 VAC 10-210-730](#))

Accommodations providers are required to collect and remit all taxes on transactions not facilitated by intermediaries. (See *Va. Code* § 58.1-612.2 A)

Similar rules apply to the transient occupancy taxes, which are remitted to the locality. In addition, intermediaries are required to submit to a locality each month the property addresses and gross receipts for all accommodations facilitated by the intermediary in such locality. (See *Va. Code* § 58.1-3826)

## **Invoice Requirements**

In any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge. Thereafter, the tax shall be a debt from the customer to the accommodations intermediary, recoverable at law in the same manner as other debts. Where the retail sale of accommodations is not facilitated by an accommodations intermediary, the accommodations provider shall separately state the amount of the tax in the bill, invoice, or similar documentation and shall add the tax to the total price paid for the use or possession of the accommodations. (See *Va. Code* § 58.1-612.2 E).

## **Marketplace Facilitators**

Accommodations intermediaries may have an obligation to register and collect the RSUT as marketplace facilitators. For additional information, please see the Guidelines for Remote Sellers and Marketplace Facilitators, [Public Document 20-43](#) (June 27, 2019).

Marketplace facilitators are generally permitted to apply for waivers of their duty to collect and remit tax pursuant to *Va. Code* § 58.1-612.1 D 3 based on a showing either of undue hardship or that all of their marketplace sellers are already registered dealers. In the past, these waivers may have permitted accommodations intermediaries to allow accommodations providers to collect and remit all taxes due on retail sales of accommodations. However, under House Bill 518 and Senate Bill 651, accommodations intermediaries, where they are deemed dealers for purposes of a retail sale of accommodations, may not assign or otherwise transfer their duty to collect and remit taxes as required by law to accommodations providers or any other entity. (See *Va. Code* § 58.1-612.2 B)

### **Effective Date of Law Change**

The law changes enacted in 2022 House Bill 518 and Senate Bill 651 apply to rentals of accommodations to transients on and after October 1, 2022. Accommodations i) furnished on or after October 1, 2022, and ii) paid for on or after October 1, 2022, are subject to the law change regardless of when the rental was reserved. The law change does not apply to accommodations furnished to transients prior to October 1, 2022, but paid for on or after October 1, 2022; nor does it apply when the accommodations are paid for in full prior to October 1, 2022, even if the accommodations are not furnished to the transient until on or after October 1, 2022.

### **Retail Sales and Use Tax Rates**

RSUT rates vary by locality and are available on the Department's website at [www.tax.virginia.gov/retail-sales-and-use-tax](http://www.tax.virginia.gov/retail-sales-and-use-tax).

### **Examples**

For examples illustrating the collection and remittance of taxes for transactions occurring prior to October 1, 2022, please refer to [2021 Guidelines](#).

*Example 1.* On October 3, 2022, a customer books and pays for a one-night reservation for a hotel to be occupied on October 13, 2022 through an accommodations intermediary's website at a rate of \$100 per night plus an accommodations fee of \$10. Under *Va. Code* § 58.1-612.2 B, as amended by House Bill 518 and Senate Bill 651, the accommodations intermediary is required to collect the RSUT on the \$110 room charge and remit it to the Department. Similarly, the accommodations intermediary is required to collect the transient occupancy tax on the \$110 room charge and remit it to the locality.

If the customer had booked and paid for the reservation prior to October 1, 2022, even though the accommodations were to be occupied after October 1, 2022, the rules applicable prior to October 1, 2022 would govern the transaction. See the [2021 Guidelines](#).

*Example 2.* On September 1, 2022, a customer books, but does not pay for, a reservation at a hotel through an accommodations intermediary's website for September 28, 2022. The customer subsequently stays one night and vacates the room before October 1, 2022. The customer pays for the reservation on October 2, 2021. The rules applicable prior to October 1, 2022 would govern the transaction since the accommodations were furnished before October 1, 2022 despite the fact that the customer paid after October 1, 2022. See the [2021 Guidelines](#)

If the same customer extended their stay until October 1, 2022 and paid for the extended period on or after October 1, 2022, the rules applicable beginning October 1, 2022 would apply to the accommodations furnished and paid for after October 1, 2022 but not the accommodations furnished and paid for in September.

*Example 3.* A customer books a one-night reservation with a hotel through the hotel's website. No facilitator is involved in the reservation. As the hotel is the dealer in this transaction, the RSUT would be remitted by the hotel to the Department and the transient occupancy tax would be remitted by the hotel to the locality.

*Example 4.* A customer books a one-night reservation for a hotel through an accommodations intermediary's website after October 1, 2022. The RSUT levied on the room charge would be remitted by the intermediary to the Department and the transient occupancy tax would be remitted by the intermediary to the locality.

If the customer had accrued additional taxable charges during the stay at the hotel, and such charges were not part of the total room charge collected by the intermediary, it is the hotel's responsibility to collect the taxes due on those charges from the customer and remit the taxes to the Department and the locality, as applicable.

### **Additional Information**

These guidelines are available online under the Guidance Documents section of the Department's website, located at <http://tax.virginia.gov/guidance-documents>. The Department will issue additional guidance regarding this law change if necessary. For additional information, please visit [www.tax.virginia.gov](http://www.tax.virginia.gov) or contact the Department at (804) 367-8037.

**Approved:**

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